Supreme Court, U.S.
FILED
95 • 380 SEP 1 1 1995
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1995

RONALD ANDOLSEK,

Petitioner

v.

CITY OF KIRTLAND, and
WES TRIMBLE, ADMINISTRATOR, BUREAU OF WORKERS' COMPENSATION, and
INDUSTRIAL COMMISSION OF OHIO,

Respondents.

Petition For Writ of Certiorari To The Court of Appeals,
Eleventh Appellate District
Lake County, Ohio

PETITION FOR WRIT OF CERTIORARI

Marc Jerold Jaffy
(COUNSEL OF RECORD)
Stewart R. Jaffy
STEWART JAFFY & ASSOC. CO., L.P.A.
306 E. Gay St.
Columbus, OH 43215
Telephone: 614/228-6148

Of Counsel:
James Kendis
SHAPIRO, KENDIS & ASSOCIATES, LPA
614 Superior West,
15th Floor
Cleveland, OH 44113
Telephone: 216/621-2030

QUESTIONS PRESENTED

The Ohio Workers' Compensation law excludes injured workers from receiving Workers Compensation for Occupational Diseases involving solely psychiatric conditions [*i.e.*, there is no physical element]. The Ohio Workers 'Compensation law also prohibits a common law tort suit by an injured worker against his employer where the employer has complied with the Ohio Workers 'Compensation law.

The Question presented is: Does excluding the class of individuals who have a psychiatric condition with no physical component violate Equal Protection of the Law under *U.S. Const. Am. XIV* where (1) the class of individuals who have a psychiatric condition with a physical component are entitled to participate; (2) the class of individuals with stress caused physical problems are entitled to participate and (3) there is no remedy available to injured workers in the class for their injury because the workers' compensation law bars compensation for this type of injury and also bars any other type of lawsuit against the employer. where the employer has complied with the Workers Compensation Act.

TABLE OF CONTENTS

Page

Questions Presented i

TABLE OF AUTHORITIES viii

OPINIONS BELOW 2

Andolsek v. City of Kirtland (1994), 99 Ohio App.3d 333 2

JURISDICTION 2

28 U.S.C. Section 1257(a) 3

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED 3

United States Constitution, Amendment XIV 3

Ohio Revised Code Sec. 4123.01 3

Ohio Revised Code Sec. 4123.68 3

Ohio Revised Code Sec. 4123.74 4

STATEMENT OF THE CASE

A. How the Federal Question Was Presented below 4

TABLE OF CONTENTS (Continued)

Page

Andolsek v. Kirtland, (1994),
99 Ohio App.3d 333, 336 5

B. Statement of Facts 6

C. Procedural Posture 7

D. Decision by the Lower Court 8

Andolsek v. Kirtland, (1994),
99 Ohio App.3d 333, 336 8

TABLE OF CONTENTS (Continued)

Page

REASONS FOR GRANTING THE WRIT

A LAW WHICH EXCLUDES AN EMPLOYMENT CAUSED PSYCHIATRIC/STRESS CONDITION FROM WORKERS' COMPENSATION VIOLATES THE INJURED WORKER'S RIGHT TO EQUAL PROTECTION OF THE LAW. THE INJURED WORKER WITH THE PSYCHIATRIC/STRESS CONDITION IS DEPRIVED OF THE OPPORTUNITY TO RECEIVE INDUSTRIAL COMPENSATION FOR A PSYCHIATRIC/ STRESS CLAIM, EVEN THOUGH OTHER INDUSTRIALLY INJURED WORKERS ARE ENTITLED TO PARTICIPATE FOR PSYCHIATRIC OR STRESS-CAUSED CONDITIONS IF THERE IS A PHYSICAL COMPONENT. THE COMPLETE BAR OF ANY OPPORTUNITY TO RECEIVE DAMAGES OR COMPENSATION FOR THE HARM DONE VIOLATES EQUAL PROTECTION. 9

U.S. Const. Am. XIV 10

Ohio Constitution, Art. II, Sec. 35 10

TABLE OF CONTENTS (Continued)

Page

O.R.C. 4123.74. 12

42 U.S.C. 12101, et seq. 12

A. THE EXCLUSION OF PSYCHIATRIC/ STRESS CONDITIONS VIOLATES EQUAL PROTECTION BECAUSE IT IMPROPERLY CREATES TWO CLASSES OF INJURED WORKERS, ONE OF WHOM IS DENIED COMPENSATION; THERE IS NO BASIS FOR THE REQUIREMENT OF A PHYSICAL COMPONENT, OR A "TOUCHING", IN ORDER FOR THERE TO BE COMPENSATION 13

Rambaldo v. Accurate Die Casting (1992), 65 Ohio St.3d 281 ..... 13, 16

U.S. Constitution, Amendment XIV 14

Edwards v. AT & T (1989), 42 Ohio St.3d 119 14

Kinney v. Kaiser Aluminum Corp. (1975), 41 Ohio St.2d 120, 123 14

TABLE OF CONTENTS (Continued)

Page

Schultz v. Barberton Glass Co. (1983), 4 Ohio St.3d 131, 134 15

Connors v. Sterling Milk (1993), 98 Ohio App.3d 711 16

Harover v. City of Norwood (1988), 48 Ohio App.3d 312, dismissed as improvidently allowed in (1989), 47 Ohio St.3d 607 16

B. DENYING WORKERS' COMPENSATION TO WORKERS WHO CONTRACT A PSYCHIATRIC/STRESS CONDITION AS A RESULT OF THEIR EMPLOYMENT, BUT PERMITTING WORKERS' COMPENSATION FOR STRESS-CAUSED CONDITIONS WHICH HAVE A PHYSICAL ELEMENT, VIOLATES EQUAL PROTECTION 17

TABLE OF CONTENTS (Continued)

Page

Oswald v. Connor (1985), 16 Ohio St.3d 38 17

Ryan v. Connor (1986), 28 Ohio St.3d 406 17

Larson, "Mental and Nervous Injury in Workmen's Compensation," 23 *Vanderbilt L. Rev.* 1243, 1253 (Nov. 1970) 18

C. NO RATIONAL BASIS EXISTS FOR BARRING WORKERS WITH PSYCHIATRIC/STRESS CLAIMS FROM WORKERS' COMPENSATION 18

Schultz v. Barberton Glass Co. (1983), 4 Ohio St.3d 131, 134 19

Kinney v. Kaiser Aluminum Corp. (1975), 41 Ohio St.2d 120 19

State, ex rel. Nyitray v. Indus. Comm. (1983), 2 Ohio St.3d 173, 178 20

CONCLUSION 21

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL:

United States Constitution, Amendment XIV 3, 10, 14

Ohio Constitution, Art. II, Sec. 35 10, ... 10

CASES:

Andolsek v. City of Kirtland (1994), 99 Ohio App.3d 333 ..... 2, 5, 8

Connors v. Sterling Milk (1993), 98 Ohio App.3d 711 16

Edwards v. AT & T (1989), 42 Ohio St.3d 119 14

TABLE OF AUTHORITIES (Continued)

Page

Harover v. City of Norwood (1988),
48 Ohio App.3d 312, dismissed as
improvidently allowed in (1989),
47 Ohio St.3d 607 16

Kinney v. Kaiser Aluminum Corp. (1975),
41 Ohio St.2d 120, 123 ..... 14, 19

Oswald v. Connor (1985),
16 Ohio St.3d 38 17

Rambaldo v. Accurate Die Casting (1992),
65 Ohio St.3d 281 ..... 13, 16

Ryan v. Connor (1986),
28 Ohio St.3d 406 17

Schultz v. Barberton Glass Co. (1983),
4 Ohio St.3d 131, 134 ..... 15, 19

State, ex rel. Nyitray v. Indus. Comm. (1983),
2 Ohio St.3d 173, 178 20

TABLE OF AUTHORITIES (Continued)

Page

STATUTORY:

Ohio Revised Code Sec. 4123.01 3

Ohio Revised Code Sec. 4123.68 3

Ohio Revised Code Sec. 4123.74 ..... 4, 12

28 U.S.C. Section 1257(a) 2

42 U.S.C. 12101, et seq. 12

OTHER:

Larson, "Mental and Nervous Injury in Workmen's Compensation," 23 *Vanderbilt L. Rev.* 1243, 1253 (Nov. 1970) 10

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

RONALD ANDOLSEK,

Petitioner,

v.

CITY OF KIRTLAND,

and

WES TRIMBLE, ADMINISTRATOR,

BUREAU OF WORKERS' COMPENSATION,

and

INDUSTRIAL COMMISSION OF OHIO,

Respondents.

Petition For Writ of Certiorari To The Court of Appeals
Eleventh Appellate District Lake County, Ohio

The petitioner, Ronald Andolsek respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Lake County, Ohio Court of Appeals, entered in the above action on November 14, 1994.

OPINIONS BELOW

The decision of the Ohio Supreme Court refusing jurisdiction over this case is reported at 72 Ohio St.3d 1420 and is reprinted in the appendix hereto, p. A-2, *infra*. The decision of the Ohio Supreme Court denying Petitioner's motion for rehearing from its refusal of jurisdiction is reported at 72 Ohio St.3d 1541, and is reprinted in the appendix hereto, p. A-1, *infra*.

The decision of the Lake County Court of Appeals is reported at *Andolsek v. City of Kirtland* (1994), 99 Ohio App.3d 333, and is reprinted in the appendix hereto, p. A-5, *infra*. The decision of the Lake County Court of Common Pleas is unreported, and is reprinted in the appendix hereto, p. A-14, *infra*.

JURISDICTION

The Ohio Supreme Court on June 14, 1995, denied Petitioner's motion for rehearing. The motion for rehearing asked the Ohio Supreme Court to reconsider its decision, dated May 3, 1995, refusing jurisdiction over Petitioner's appeal.

Petitioner sought to have the Ohio Supreme Court review the decision of the Eleventh Appellate District, Lake County, Ohio, dated November 14, 1995, which is the judgment sought to be reviewed in the instant petition.

This petition for Writ of Certiorari is being docketed within ninety days from the denial of rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV:

> . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws. . .

Ohio Revised Code Section 4123.01:

> (C) . . . "Injury" does not include:
>
> (1) Psychiatric conditions except where the conditions have arisen from an injury or occupational disease

Ohio Revised Code Section 4123.68:

> As used in this section and Chapter 4123. of the Revised Code, "occupational disease" means a disease contracted in the course of employment
>
> * * *

> . . . A disease which meets the definition of an occupation disease is compensable pursuant to Chapter 4123. of the Revised Code . . .

Ohio Revised Code Section 4123.74

> Employers who comply . . . shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee . . .

STATEMENT OF THE CASE

A. How the Federal Question Was Presented below

This case arose on a motion for judgment on the pleadings filed by the Respondent Administrator. In response to this motion, Petitioner indicated

> Plaintiff opposes the motion on the grounds that the statutory and case law authority relied upon by the [Respondent] are unconstitutional and deprive the plaintiff of equal protection under the law.

The Court of Common pleas granted the motion to dismiss.

After the Court of Common Pleas granted the motion, Petitioner appealed to the Court of Appeals for Lake County. Under Assignment of Error No. 1 Petitioner argued that:

> To deny workers who suffer from stress caused psychiatric conditions from any opportunity to participate in the workers compensation fund violates equal protection of the law under *Ohio Constitution Art. I, Section 11* and *U.S. Constitution, Amendment XIV.*

The Court of Appeals held against Petitioner, finding

> we find that the exclusion for mental stress in the absence of a contemporaneous physical injury does not violate the Equal Protection Clause of the United States Constitution . . .
>
> *Andolsek v. Kirtland*, (1994), 99 Ohio App.3d 333, 336

Similarly, in the memorandum in support of jurisdiction filed in the Ohio Supreme Court, Proposition of Law I indicated that

> A law which excludes an employment caused psychiatric/stress condition from workers compensation violates the injured worker's right to equal protection of the laws. . . .

The Ohio Supreme Court refused jurisdiction over this case.

B. Statement of Facts[1]

Officer Andolsek suffered an occupational disease in the course of and arising out of his employment with the City of Kirtland [hereinafter "City"].

Officer Andolsek worked as a police officer for the City. While working for the City, in the performance of his job duties, Officer Andolsek contracted an occupational disease involving post-traumatic stress disorder, depression, and other psychiatric conditions. [hereinafter "psychiatric/ stress"]. [Plaintiff's Complaint paragraph 1]. It is undisputed that the psychiatric/stress condition occurred as a result of Officer Andolsek's employment.

Officer Andolsek included his application for benefits as part of his complaint. [Complaint paragraph 2]. According to this application, Officer Andolsek indicated

> I was the investigative officer on the Kirtland Cult Killings. I began this investigation in December of 1989. The investigation of this, the horror of the matter, the constant stress in investigating 13 murders and keeping evidence

---

1 **This case was decided on a "motion for judgment on the pleadings or motion to dismiss for failure to state a claim." Therefore, the allegations of the Complaint must be taken as true. *Tulloh v. Goodyear Atomic Corp.* (1992), 62 Ohio St. 3d 541, 544.**

> straight on the murders caused me to become totally stressed and depressed.

The record contains two medical reports from Dr. Battisti, the Psychologist treating Officer Andolsek, which further demonstrate that Officer Andolsek suffered these psychiatric conditions as a result of his employment, and his investigation of the Kirtland Cult Killings. Dr. Battisti stated that Officer Andolsek's problems "were diagnosed as post-traumatic stress syndrome. The cause of the stress was the intense investigation of the Kirtland Cult Murders." [Report of Dr. Batisti, dated April 14, 1992, attached to Plaintiff's Answers to Defendant's Interrogatories].

C. Procedural Posture

Plaintiff-Appellant, Ronald Andolsek filed for workers 'compensation. The employer, City of Kirtland, did not object to, or fight, the claim. However, the Ohio Industrial Commission denied the claim.

Mr. Andolsek, filed an appeal of the denial to the Lake County Court of Common Pleas. Defendant-Appellee, Administrator of the Bureau of Workers 'Compensation, filed a "motion for judgment on the pleadings or motion to dismiss for failure to state a claim."

The Court of Common Pleas granted this motion. Plaintiff-Appellant Andolsek appealed this decision to the Court of Appeals, which affirmed.

Mr. Andolsek filed a memorandum in support of jurisdiction in the Ohio Supreme Court, seeking to have that Court review the Court of Appeals' decision. The Ohio Supreme Court refused jurisdiction over the case.

Mr. Andolsek filed a motion for reconsideration of the Ohio Supreme Court's refusal of jurisdiction. The Ohio Supreme Court denied that motion on June 14, 1995.

This petition for Certiorari has followed.

D. Decision by the Lower Court

The Court of Appeals in this case determined that the Equal Protection clause was not violated

> we find that the exclusion for mental stress in the absence of a contemporaneous physical injury does not violate the Equal Protection Clause of the United States Constitution
>
> *Andolsek v. Kirtland*, (1994), 99 Ohio App.3d 333, 336

REASONS FOR GRANTING THE WRIT

A LAW WHICH EXCLUDES AN EMPLOYMENT CAUSED PSYCHIATRIC/ STRESS CONDITION FROM WORKERS' COMPENSATION VIOLATES THE INJURED WORKER S RIGHT TO EQUAL PROTECTION OF THE LAW. THE INJURED WORKER WITH THE PSYCHIATRIC/STRESS CONDITION IS DEPRIVED OF THE OPPORTUNITY TO RECEIVE INDUSTRIAL COMPENSATION FOR A PSYCHIATRIC/ STRESS CLAIM, EVEN THOUGH OTHER INDUSTRIALLY INJURED WORKERS ARE ENTITLED TO PARTICIPATE FOR PSYCHIATRIC OR STRESS-CAUSED CONDITIONS IF THERE IS A PHYSICAL COMPONENT. THE COMPLETE BAR OF ANY OPPORTUNITY TO RECEIVE DAMAGES OR COMPENSATION FOR THE HARM DONE VIOLATES EQUAL PROTECTION.

Mr. Andolsek suffered his psychiatric condition as a result of the efforts involved in his intense investigation of the Kirtland Cult Massacres, a significant criminal case. His work in this investigation aided the public of the City of Kirtland by resulting in convictions resulting from those murders.

The City has not objected to the claim for workers compensation filed by Mr. Andolsek. Nevertheless, the claim was disallowed by the Ohio Industrial Commission under the

provisions of an Ohio statute which specifically excludes psychiatric claims such as that suffered by Mr. Andolsek.

Had Mr. Andolsek suffered from a heart attack, or an ulcer, from his work he would be covered by the Ohio Workers' Compensation system. However, because there is no physical component to his problem he is excluded from coverage under the Ohio Workers' Compensation system.

Excluding work-related injuries from workers compensation because they are solely psychiatric in nature violates equal protection. *U.S. Const. Am. XIV.*

Ohio's Workers' Compensation system is not a state welfare system. It is a state-operated insurance system, paid for by employers, to cover employees injured as a result of their work. The purpose of Ohio's workers' compensation system is to ensure that an employee harmed as a result of his employment is not reduced to reliance on welfare. *see Ohio Constitution, Art. II, Section 35.* As the Comment to *Art. II, Section 35* indicates "This section was adopted to provide a system of compulsory insurance providing benefits for work-related injuries and occupational diseases."

This type of insurance system exists to provide coverage to a specific type of individual. Therefore, the normal rules which apply to generic social welfare programs do not apply.

All employers in Ohio must participate in the Ohio Workers' Compensation system.

This type of insurance known as workers compensation exists for a specific purpose; the legislature cannot eliminate a sub-class of employees who suffer harm as a result of their employment, solely because of the psychiatric nature of their claims.

The exclusion creates a class of people who are admittedly harmed by their work but are not protected by the Workers' Compensation law, due to the psychiatric nature of the claim. All other people harmed by their work are protected by the Ohio Workers' Compensation law. No justification for such an exclusion exists.

Ohio's Workers' Compensation law does not exclude all psychiatric claims. It permits coverage for psychiatric claims involving a physical element.

Ohio's Workers' Compensation law excludes only that class of individuals who have psychiatric claims with no physical element.

The law arbitrarily creates a class of individuals whose claims are excluded from coverage, even though the condition suffered may be medically proven.

The exclusion harms this class of individuals who have suffered a work related psychiatric condition.

The issue of psychiatric workers' compensation claims is an important nationwide issue; as is the question of whether it is proper for a state legislature to exclude a class of individuals from the opportunity for compensation.

Furthermore, under Ohio law a worker who suffers a work-related psychiatric condition is barred from seeking any remedy outside of the workers 'compensation system. *O.R.C. 4123.74.*

Therefore, this class of individuals is completely barred from any opportunity to recover for the harm done them. *O.R.C. 4123.74* limits workers who suffer a work-related harm to the workers' compensation system even though they are not entitled to receive workers compensation. Such workers may not resort to a common law suit.

Equal Protection is violated where a state completely bars workers who have been harmed in the course of their employment from the right to a remedy for the harm.

The state has created a class of workers suffering psychiatric conditions and has barred them by law from having any remedy. This is state discrimination against workers who have suffered psychiatric problems without physical harm, in their employment.

Such state-created discrimination is improper.

Whether the state may discriminate against individuals based on the psychiatric nature of their claim is a matter of national concern in this day and age [for example, national anti-discrimination statutes such as the *Americans with Disabilities Act (ADA), 42 U.S.C. 12101, et seq.*, demonstrate the important public interest in preventing discrimination against the disabled].

The issue of whether or not a state may by statute bar an entire class of individuals from coverage -- for no reason other than that their psychiatric claim lacks a physical component -- is of vital importance to all workers.

Because the state's classification violated the Constitutional Equal Protection requirements, the Court should accept jurisdiction of this case.

A. THE EXCLUSION OF PSYCHIATRIC/ STRESS CONDITIONS VIOLATES EQUAL PROTECTION BECAUSE IT IMPROPERLY CREATES TWO CLASSES OF INJURED WORKERS, ONE OF WHOM IS DENIED COMPENSATION; THERE IS NO BASIS FOR THE REQUIREMENT OF A PHYSICAL COMPONENT, OR A "TOUCHING", IN ORDER FOR THERE TO BE COMPENSATION

It is undisputed that Officer Andolsek suffered his psychiatric condition as a result of his employment. Ohio Workers' Compensation law denies him participation in the Ohio Workers' Compensation fund for this condition even though it is undisputed that the condition for which compensation is sought is work-related. *Rambaldo v. Accurate Die Casting (1992)*, 65 Ohio St.3d 281.

To deny workers who suffer psychiatric/stress conditions from any opportunity to participate in the workers

compensation fund violates equal protection of the law under *U.S. Constitution, Amendment XIV.*

Ohio's Workers' Compensation system currently permits compensation for psychiatric conditions which have a physical component, but denies compensation for psychiatric conditions which have no physical component.

It is completely irrational for the Ohio Workers Compensation law to compensate some psychiatric conditions (those with a physical component, *see, e.g., Edwards v. AT & T* (1989), 42 Ohio St.3d 119), but not others (psychiatric/stress conditions), even though the psychiatric/stress condition may be proved to be work related with equal or greater certainty than psychiatric conditions with a physical component.

The system establishes two classes of workers with psychiatric problems: 1) workers with solely psychiatric conditions and 2) workers who have psychiatric conditions with a physical element.

Claimants in Class 2 are eligible for Worker's Compensation while claimants in Class 1 are not, even though both classes consist of workers who suffer psychiatric problems as a result of their employment.

The classification violates equal protection. Equal Protection "require[s] the existence of reasonable grounds for making a distinction between those within and those outside a designated class." *Kinney v. Kaiser Aluminum Corp.* (1975), 41 Ohio St.2d 120, 123.

There is no reasonable grounds for this distinction.

In effect, the requirement of a physical element is a requirement of a "touching."

No rational basis for a requirement of a "touching" exists. Over the years, the national trend in tort law has recognized this and moved away from the "touching" requirement. In Ohio, the requirement of a "touching" was eliminated for tort cases because:

> Having carefully examined the arguments in support of the contemporaneous physical injury rule, it is clear that continued adherence to the rule makes little sense. *Legal scholars who have considered the rule denying recovery in the absence of contemporaneous physical injury or impact are unanimous in condemning it as unjust and contrary to experience.*
>
> *Schultz v. Barberton Glass Co.* (1983), 4 Ohio St.3d 131, 134. (Emphasis added.)

Requiring a physical element before permitting compensation for psychiatric problems in the workers compensation area is also "unjust" and "contrary to experience." Therefore, it violates Equal Protection.

If medical testimony can establish the existence of a work related condition such as the psychiatric condition

suffered by Officer Andolsek, there is no reason to exclude such claims.

If there were a physical component to this case, it would not be argued that the claim was barred.

What justification exists for making a distinction based on whether or not there is a physical element? In Officer Andolsek's case had stress caused an ulcer and a psychiatric condition his claim would be compensable because there is a physical component. Absent the physical component, no recovery is available.

However, in both situations it is unarguable that the conditions are work-related. Because there is no basis for requiring a physical component, the physical limitation on psychiatric claims violates equal protection.

This issue has been previously raised and argued before the Ohio Supreme Court. However, the Ohio Supreme Court has refused to decide this issue, and dismissed those cases raising it. *see Connors v. Sterling Milk* (1993), 98 Ohio App.3d 711, dismissed as improvidently allowed in (1995), 72 Ohio St.3d 1208; *Harover v. City of Norwood* (1988), 48 Ohio App.3d 312, dismissed as improvidently allowed in (1989), 47 Ohio St.3d 607. The Ohio Supreme Court's decision in *Rambaldo v. Accurate Die Casting* (1992), 65 Ohio St.3d 281, did not address constitutional issues.

B. DENYING WORKERS' COMPENSATION TO WORKERS WHO CONTRACT A PSYCHIATRIC/STRESS CONDITION AS A RESULT OF THEIR EMPLOYMENT, BUT PERMITTING WORKERS' COMPENSATION FOR STRESS-CAUSED CONDITIONS WHICH HAVE A PHYSICAL ELEMENT, VIOLATES EQUAL PROTECTION

Equal protection is also violated because the law creates two classes of stress-caused conditions. Stress-caused physical conditions are compensable under the Ohio workers compensation system [*See, e.g., Oswald v. Connor* (1985), 16 Ohio St.3d 38 (stress causes death); *Ryan v. Connor* (1986), 28 Ohio St.3d 406 (stress causes heart attack)]; but stress-caused psychiatric conditions are excluded.

No valid reason exists for excluding stress-caused psychiatric conditions from compensation.

As long as sufficient medical evidence to prove the condition exists and was work-related can be provided, why should a psychiatric/stress claim be barred?

No reasonable basis exists for denying someone who suffers a stress-caused psychiatric problem as a result of their employment from workers' compensation. Professor Larson, a noted and respected authority in the field of workers compensation, criticizes the requirement of a "physical" element for recognition of a mental condition, because

> there is really *no valid distinction* between physical and `nervous' injury. Certainly modern medical opinion would support this view and insist that it is no longer realistic to draw a line between what is `nervous' and what is `physical.
>
> Larson, "Mental and Nervous Injury in Workmen's Compensation," 23 *Vanderbilt L. Rev.* 1243, 1253 (Nov. 1970). [Emphasis added].

C. NO RATIONAL BASIS EXISTS FOR BARRING WORKERS WITH PSYCHIATRIC/STRESS CLAIMS FROM WORKERS' COMPENSATION.

The current system creates a class of individuals who have suffered a condition as a result of their employment who are barred from any possibility of receiving Workers Compensation. This classification violates equal protection because there is no basis for such a distinction.

No reason to distinguish a claim solely on the basis of its psycho-logical or physical nature exists.

There are safeguards in the Ohio Workers Compensation system which apply to ensure the validity of allowed claims. If an employer believes a claim is invalid, it will appeal the claim to Court.

A contested claim will eventually wind up before a jury. Medical evidence will be presented by both sides. The jury will make credibility determinations, just as they do in any other case.

The Ohio Supreme Court recognized in *Schultz, supra.*, that in personal injury cases juries can make such determinations. Juries in Workers' Compensation cases can also make such determinations.

One claimed justification of a bar on psychiatric/stress claims is that it is difficult to determine the validity of such claims. However, administrative ease does not provide a valid justification for creating a classification.

The administrative ease justification was held invalid in *Kinney v. Kaiser Aluminum Corp.* (1975), 41 Ohio St.2d 120, where the Ohio Supreme Court said "recent United States Supreme Court decisions have struck down, as violation of Due Process, state statues creating conclusive presumptions erected for `administrative ease." *Kinney* at 124.

The Ohio Supreme Court held that the presumption in *Kinney* was invalid because an alternative would permit the goal of establishing causal connection to be reached without arbitrarily denying all such claims. The alternative "method is, of course, the utilization of the evidentiary hearing." *Kinney* at 125.

The alternative of a hearing would also permit psychiatric/stress claims to be considered and causal

connection established, without barring all psychiatric/stress claims.

Nor is preserving the fund a valid reason for a classification. *State, ex rel. Nyitray v. Indus. Comm.* (1983), 2 Ohio St.3d 173, 178. The fund, after all, exists to provide compensation for work-related conditions such as the present.

Because no valid reason for denying psychiatric/stress claims exists, the classification violates equal protection.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

STEWART R. JAFFY
MARC J. JAFFY
STEWART JAFFY & ASSOCIATES CO., LPA
306 East Gay Street
Columbus, Ohio 43215
Telephone: 614/228-6148

Counsel for Appellant

OF COUNSEL:
James Kendis
SHAPIRO, KENDIS & ASSOCIATES, LPA
Rockefeller Building
614 Superior West, 15th Floor
Cleveland OH 44113-1398
Telephone: 216/621-2030

APPENDIX

THE SUPREME COURT OF OHIO

1995 TERM

To wit: May 14, 1995

Ronald Andolsek, Appellant,	:	Case No. 94-2702
v.	:	RECONSIDERATION ENTRY
City of Kirtland.	:	
[Wes Trimble, Administrator, Bureau of Workers' Compensation, et al., Appellees.]	:	(Lake County)

IT IS ORDERED by the Court that the motion for reconsideration in this case be, and the same is hereby, denied.

(Court of Appeals No. 94L038)

s/_____
THOMAS J. MOYER
Chief Justice

THE SUPREME COURT OF OHIO

1995 TERM
To wit: May 3, 1995

Ronald Andolsek,	:	
Appellant,	:	Case No. 94-2702
v.	:	
City of Kirtland.	:	
[Wes Trimble,	:	
Administrator,	:	
Bureau of Workers'	:	ENTRY
Compensation,	:	
et al.,	:	
Appellees.]		

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Stewart Jaffy & Associates Co., L.P.A.

(Lake County Court of Appeals; No. 94L038)

s/_____
THOMAS J. MOYER
Chief Justice

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

STATE OF OHIO)
) SS.
COUNTY OF LAKE)

RONALD ANDOLSEK,

Plaintiff-Appellant,

-vs-

CITY OF KIRTLAND,

Defendant, CASE NO. 94-L-038

WES TRIMBLE,
ADMINISTRATOR,
BUREAU OF WORKERS
COMPENSATION, et al.,

Defendants-Appellees.

JUDGMENT ENTRY

For the reasons stated in the Opinion of this court, the assignments of error are without merit, and it is the judgment and order of this court that the judgment of the trial court is affirmed.

s/_____
PRESIDING JUDGE DONALD R. FORD

CACIOPPO, J., Ret.,
Ninth Appellate District,
sitting by assignment,

MAHONEY, J., EDWARD, Ret.
Ninth Appellate District,
sitting by assignment.

COURT OF APPEALS

ELEVENTH DISTRICT

LAKE COUNTY, OHIO

RONALD ANDOLSEK,

Plaintiff-Appellant,

-vs-

CITY OF KIRTLAND,

Defendant,

WES TRIMBLE, ADMINISTRATOR, BUREAU OF WORKERS COMPENSATION, et al.,

Defendants-Appellees.

JUDGES

HON. DONALD R. FORD, P.J.,
HON. MARY CACIOPPO, J., Ret., Ninth Appellate District, sitting my assignment,
HON. EDWARD J. MAHONEY, J., Ret., Ninth Appellate District, sitting by assignment.

ACCELERATED
CASE NO. 94-L-038

OPINION

CHARACTER OF PROCEEDINGS:	Civil Appeal form the Court of Common Pleas Case No. 93 CV 00755
	LEE FISHER ATTORNEY GENERAL
JUDGMENT: Affirmed.	
ATTY. JAMES D. KENDIS Rockefeller Building 15th Floor 614 West Superior Avenue Cleveland, OH 44113	MARK E. MASTRANGELO FRED J. POMPEANI ASSISTANT ATTORNEY GENERALS 615 Superior Avenue 12th Floor Cleveland, OH 44113-1899
ATTY. STEWART R. JAFFEY ATTY. MARC J. JAFFEY 306 East Gay Street Columbus, OH 43215	(For Defendants-Appellees)
(For Plaintiff-Appellant)	

FORD, P.J.

Appellant, Ronald Andolsek, appeals from the trial court's order dismissing his appeal and complaint for failure to state a claim upon which relief can be granted.

Appellant was employed by the city of Kirtland as a police officer. On March 23, 1992, he filed an occupational disease claim with the Ohio Bureau of Workers Compensation alleging that he was diagnosed as suffering from post-traumatic stress disorder, depression and burnout as a result of his duties in investigating the Kirtland cult killings. The district hearing officer disallowed his claim because it alleged a psychiatric condition without physical trauma. The regional board of review affirmed the disallowance, and the Industrial Commission refused appellant's appeal from the Board of Review. Appellant appeals the trial court's dismissal order, assigning the following as error:

> "1. The trial court erred in granting defendant's `motion for judgment on the pleadings or motion to dismiss for failure to state a claim' where the motion depends on application of a law which violates the injured worker's right to equal protection of the laws by depriving the injured worker of the opportunity to receive industrial compensation for a psychiatric/stress claim, where other industrially injured workers are entitled to participate for psychiatric or stress-caused conditions.

"2. The trial court erred in granting defendant's `motion for judgment on the pleadings or motion to dismiss for failure to state a claim' where granting such motion depends on application of a law which violates the injured worker's rights to receive compensation for a work related injury or occupational disease under the provisions of the Ohio Constitution creating the foundation for the Ohio Bureau of Workers Compensation system.

"3. The trial court erred in granting the defendant's motion which results from a narrow definition excluding psychiatric/stress claims from compensation in violation of the R.C. 4123.95 requirement for liberal construction."

In the first assignment, appellant argues that the trial court erred in dismissing his complaint for failure to state a claim because such decision was predicated on the application of law which violates appellant's right to equal protection.

Pursuant to Ohio's workers' compensation statutory scheme, compensation is sanctioned for a worker who is disabled by a mental condition resulting from a compensable work-related physical injury. R.C. 4123.01(C)(1); *State, ex rel. Anderson v. Indus. Comm.* (1980), 62 Ohio St.2d 166; *Rambaldo v. Accurate Die Casting* (1992), 64 Ohio St.3d 281. However, compensation is not available for workers

suffering mental conditions caused solely by job-related stress. Rambaldo, syllabus. Appellant contends that this situation violates is right to equal protection.

This argument has been advanced several times and has been rejected. *Connors v. The Sterling Milk Co.* (Nov. 4, 1993), Henry App. No. 7-93-12, unreported; *Zaricki v. Laco Die Casting Co.* (July 8, 1982), Cuyahoga App. No. 44254, unreported; *Neil v. Mayfield* (July 22, 1988), Montgomery App. No. CA 10881, unreported; *Fields v. City of Youngstown* (May 30, 1989), Mahoning App. No. 88 CA 89, unreported.

"The United States Supreme Court has held that, `[i]n the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Zaricki* at 3, quoting *Dandridge v. Williams* (1970), 397 U.S. 471, 485; see, also, *Connors* at 6. Provided a classification does not burden a suspect group, a statute should not be deemed violative of the Equal Protection Clause unless "the varying treatment of different groups or persons is so unrelated to achievement of any combination of legislative purposes that it can only be concluded that the legislature's actions were irrational." *Vance v. Bradley* (1979), 440 U.S. 93, 97; *Zaricki* at 3; *Connors* at 6. Because appellant does not assert that he falls within a suspect or fundamental classification, the appropriate standard of review is the rational basis test; therefore, provided the statutory framework is rationally related to a legitimate government interest, it will be upheld. *Connors* at 6.

Applying this test, we find that the exclusion for mental stress in the absence of a contemporaneous physical injury does not violate the Equal Protection Clause of the United States Constitution or the Ohio Constitution because:

> "(1) the state has a legitimate interest in maintaining the self-supporting nature of its Worker's *[sic]* Compensation Fund; (2) the state has a legitimate interest in distributing the available resources to the disabilities determined by the state to be covered rather than to cover all disabilities inadequately; and (3) the state has a legitimate interest in maintaining a contribution rate at a level that will not unduly burden participating employers." *Connors* at 7; see, also, *Zaricki* at 4; *Mayfield* at 5; *Fields* at 8.

This assignment is meritless.

In the second assignment, appellant contends that the legislature exceeded its authority under Article II, Section 35 of the Ohio Constitution because, in defining injury pursuant to R.C. 4123.01(C)(1), it excluded compensation for psychiatric injuries not resulting from a compensable work-related physical injury.

Article II, Section 35, Workmen's [Workers] Compensation, states, in pertinent part:

> "For the purpose of providing compensation to work[ers] and their dependents, for death,

> injuries or occupational disease, occasioned in the course of such work[ers] employment, *laws may be passed* establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, *determining the terms and conditions upon which payment shall be made therefrom.* (Emphasis added.)

"The purpose of Article II, Section 35 of the Ohio Constitution is to compensate workers and/or their dependents for injuries arising out of the course of employment. However, Section 35 does give the state the authority to determine what injuries are compensable." *Connors* at 8. Therefore, the legislature did not exceed its authority by excluding psychiatric injury not resulting from physical injury from the class of compensable injuries. *Connors* at 9. This assignment is meritless.

In the third assignment, appellant maintains that the trial court erred in dismissing his complaint because R.C. 4123.95 mandates that workers' compensation statutes are to be liberally construed in favor of employees' receipt of benefits.

R.C. 4123.01(C) states:

> "`Injury' includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment. `Injury' does not include:

"(1) Psychiatric conditions except where the conditions have arisen from an injury or occupational disease;

"***."

The Supreme Court of Ohio has recently construed the foregoing statute and concluded "*** that by specifically excluding claims for mental conditions based solely on job-related stress from the definition of `injury,' the General Assembly intended that this type of claim not be compensable under the Workers' COMPENSATION Act***." *Rambaldo* at 287. Despite this, appellant argues that his claim is covered pursuant to R.C. 4123.95, which states, [s]ections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees."

R.C. 1.51 states:

"If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. *If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.*" (Emphasis added.)

Clearly, R.C. 4123.01(C)(1) is the special provision and R.C. 4123.95 is the general provision. There can be no question that it was not the legislature's manifest intent to have the general provision prevail over the special provision. See *Rambaldo* at 287. This assignment is meritless.

Based on the foregoing, the judgment of the trial court is affirmed.

s/_____
PRESIDING JUDGE DONALD R. FORD

CACIOPPO, J., Ret.,
Ninth Appellate District,
sitting by assignment,

MAHONEY, J., EDWARD, Ret.,
Ninth Appellate District,
sitting by assignment,

concur.

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

RONALD ANDOLSEK Plaintiff,	:	CASE NO. 93CV 000755
-vs-	:	JOURNAL ENTRY
CITY OF KIRTLAND, et al	:	
Defendants.	:	January 31, 1994

Defendant Administrator, J. Wesley Trimble's motion for judgment on the pleadings or motion to dismiss for failure to state a claim is granted. Costs are assessed against plaintiff Ronald Andolsek.

IT IS SO ORDERED.

s/_____
JAMES W. JACKSON
Judge of the Court of Common Pleas

Copies:
Geoffrey J. Shapiro, Esq.
Mark E. Mastrangelo/Fred J. Pompeani/Jeffrey B. Duber,
Assistant Attorneys General

Supreme Court, U.S.
FILED
OCT 12 1995
OFFICE OF THE CLERK

No. 95-380

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

RONALD ANDOLSEK,
Petitioner,

v.

CITY OF KIRTLAND, and ADMINISTRATOR, BUREAU OF WORKERS' COMPENSATION, and INDUSTRIAL COMMISSION OF OHIO,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeals,
Eleventh Appellate District
Lake County, Ohio

BRIEF IN OPPOSITION

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO
JEFFREY S. SUTTON (0051226)
State Solicitor

DAVID J. KOVACH (0059431)
Assistant Attorney General
Counsel of Record
MARK E. MASTRANGELO(0023603)
Assistant Attorney General
615 West Superior Avenue
State Office Building, 12th Floor
Cleveland, Ohio 44113-1899
(216) 787-3030

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities ii

Statement of the Case 2

Reasons for Denying the Writ 4

Conclusion 7

TABLE OF AUTHORITIES

Constitution

U.S. Constitution, Amendment XIV 6

Cases

Andolsek v. Kirtland (1994),
99 Ohio App.3d 333 6

Connors v. Sterling Milk Co. (1993),
98 Ohio App.3d 711 6

Dandridge v. Williams (1970),
397 U.S. 471 5

Duty v. Connor (1982),
Cuy. App. No. 44164, unreported 6

Fields v. City of Youngstown (May 30, 1989),
Mahoning App. No. CA 89, unreported 6

Geduldig v. Aiello (1974),
417 U.S. 484 5

Neil v. Mayfield (July 22, 1988),
Montgomery App. No. CA 10881, unreported. . 6

Statutes

Ohio Revised Code Sec. 4123.01 2

Ohio Revised Code Sec. 4123.68 2

Ohio Revised Code Sec. 4123.74 4

No. 95-380

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

RONALD ANDOLSEK,

Petitioner,

v.

CITY OF KIRTLAND, and ADMINISTRATOR, BUREAU OF WORKERS' COMPENSATION, and INDUSTRIAL COMMISSION OF OHIO,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeals,
Eleventh Appellate District
Lake County, Ohio

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

On March 23, 1992, Petitioner Ronald Andolsek filed an application for workers' compensation benefits under the Ohio Workers' Compensation Act. The claim was filed as an occupational disease claim for a psychiatric condition, but did not allege a contemporaneous physical injury or an allowable occupational disease.

According to the application for benefits, Petitioner was the investigative officer on the "Kirtland Cult Killings." Petitioner claims that, as a result of the constant stress involved in this investigation, he became stressed and depressed resulting in post-traumatic stress disorder, depression and burn out.

Petitioner's application for benefits was subsequently heard and disallowed administratively on the basis that he did not sustain an occupational disease and/or injury in the course of and arising out of his employment. See R.C. § 4123.01(C)(1) and 4123.68.

Subsequently, on May 20, 1993, Petitioner filed a Notice of Appeal and Complaint in the Court of Common Pleas for Lake County, Ohio against the Respondents, Administrator of the Ohio Bureau of Workers' Compensation, the Industrial Commission of Ohio, and the City of Kirtland. The Complaint alleged that Petitioner was employed as a police officer by the City of Kirtland on or about May 21, 1990, and while in the performance of his duties contracted post-traumatic stress disorder, depression, and other psychiatric conditions.

Petitioner claimed neither a physical injury resulting

from work-related stress nor a mental condition arising from a compensable work-related physical injury or occupational disease. Rather, Petitioner alleged in his complaint that he developed a mental disorder occasioned by job-related stress and that such a condition is compensable as an occupational disease. Respondents, Administrator and the Industrial Commission, disagreed and, in their answer, denied that any psychiatric condition resulted from Petitioner's employment. Thereafter, the Lake County Court of Common Pleas granted Respondents' motion for judgment on the pleadings.

On November 14, 1994, the Eleventh District Court of Appeals affirmed the trial court's dismissal of Petitioner's cause of action against Respondents. The lower court found that the exclusion of psychiatric injuries without a contemporaneous physical or traumatic injury from coverage under the Workers' Compensation Act does not violate Petitioner's constitutional rights.

Petitioner then appealed to the Ohio Supreme Court which, on May 3, 1995, declined to hear the case. On June 14, 1995, Petitioner's motion for reconsideration was also denied by the Ohio Supreme Court.

REASONS FOR DENYING THE WRIT

As an initial matter, it is important to point out that Petitioner has not even alleged, much less established, that the lower courts are divided on this issue. Indeed, Petitioner relies solely on Ohio cases in arguing that the Court should review this dispute.

What is worse, even the arguments that Petitioner does make are misleading. First, Petitioner contends that Ohio Revised Code § 4123.74 completely bars workers with psychiatric conditions from seeking a remedy outside the workers' compensation system. This is a misstatement of the law. In actuality, the statute protects complying employers from liability in damages, at common law or by statute, where a worker's injury or condition arises out of employment; it does not bar actions in intentional tort. R.C. § 4123.74.

Second, Petitioner maintains that it is undisputed he suffered from a work-related psychiatric condition. On the contrary, Respondents have disputed, and continue to dispute, whether Petitioner's psychiatric conditions were in fact the result of his employment. In their answer at the trial court level, and throughout the appellate process, the Administrator and the Industrial Commission denied that any psychiatric condition resulted from Petitioner's employment.

Petitioner's ensuing arguments, that the Workers' Compensation law violates equal protection and that the state has no rational basis for creating such a statutory classification, are also without merit. The denial of coverage for mental disorders based solely upon stress does not violate equal protection of the law. This Court has determined that

legitimate state interests can be and are sufficient to permit a state to establish a classification scheme in areas of economic and social legislation. *Geduldig v. Aiello* (1974), 417 U.S. 484. In *Dandridge v. Williams* (1970), 397 U.S. 471, the United States Supreme Court addressed the issue of classification schemes in social and economic legislation. The Court held that the Equal Protection Clause does not require a state to choose between attacking every aspect of a problem or not attacking the problem at all. As the court noted at 397 U.S. at pg. 485:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." ... "The problems of government are practical ones and may justify, if they do not require, rough accommodations--illogical, it may be, and unscientific."..."A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."...

Plainly, there are ample legitimate grounds for this statutory scheme: (1) the state has a legitimate interest in maintaining the self-supporting nature of its Workers' Compensation Fund; (2) the state has a legitimate interest in distributing the available resources to the disabilities determined by the state to be covered rather than to cover all disabilities inadequately; and (3) the state has a legitimate

interest in maintaining a contribution rate at a level that will not unduly burden participating employers. See, *Connors v. Sterling Milk Co.* (1993), 98 Ohio App.3d 711 (dismissed as having been improvidently allowed in 72 Ohio St.3d 1208). This test has been applied in other Ohio appellate districts which have upheld Ohio's ban on purely mental injuries. *Andolsek v. Kirtland* (1994), 99 Ohio App.3d 333; *Neil v. Mayfield* (July 22, 1988), Montgomery App. No. CA 10881, unreported; *Fields v. City of Youngstown* (May 30, 1989), Mahoning App. No. CA 89, unreported; *Duty v. Connor* (1982), Cuy. App. No. 44164, unreported. Hence, there exist several "reasonable bases" to support the state's classification scheme.

Consequently, Chapter 4123 of the Ohio Revised Code does not violate the Equal Protection Clause of the Fourteenth Amendment. The State of Ohio has a legitimate interest in the maintenance and fair distribution of its workers' compensation fund, and a reasonable basis for denying coverage to workers who allege mental conditions without a contemporaneous physical injury or previously allowed occupational disease.

CONCLUSION

Wherefore, for the above-stated reasons, the Respondents request that this court deny the petition for a writ of certiorari.

Respectfully submitted,

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO
JEFFREY S. SUTTON (0051226)
State Solicitor

DAVID J. KOVACH (0059431)
Assistant Attorney General
Counsel of Record
MARK E. MASTRANGELO(0023603)
Assistant Attorney General
615 West Superior Avenue
State Office Building, 12th Floor
Cleveland, Ohio 44113-1899
(216) 787-3030

Counsel for Respondents

Supreme Court, U.S.
FILED
OCT 23 1995
OFFICE OF THE CLERK

No. 95-380

(3)

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1995

RONALD ANDOLSEK,

Petitioner

v.

CITY OF KIRTLAND, and
WES TRIMBLE, ADMINISTRATOR, BUREAU OF WORKERS' COMPENSATION, and
INDUSTRIAL COMMISSION OF OHIO,

Respondents.

Petition For Writ of Certiorari To The Court of Appeals,
Eleventh Appellate District
Lake County, Ohio

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Marc Jerold Jaffy
(COUNSEL OF RECORD)
Stewart R. Jaffy
STEWART JAFFY & ASSOC. CO., L.P.A.
306 East Gay Street
Columbus, OH 43215
Telephone: 614/228-6148

Of Counsel:
James Kendis
SHAPIRO, KENDIS & ASSOCIATES, LPA
614 Superior West,
Fifteenth Floor
Cleveland, OH 44113
Telephone: 216/621-2030

---

7 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

State, ex rel. Ohio AFL-CIO v. Voinovich,
69 Ohio St.3d 225, 229 (1994) 2

Jones v. VIP Development Co.,
15 Ohio St.3d 90, syl. 1 3

Van Fossen v. Babcock & Wilcox Co.,
36 Ohio St.3d 100, syl. 6 (1988) 3

Ohio Supreme Court Rules for the Reporting of Opinions,
Rule 1(B) 3

TABLE OF AUTHORITIES

Page

CASES:

Jones v. VIP Development Co.,
15 Ohio St.3d 90, syl. 1 3

State, ex rel. Ohio AFL-CIO v. Voinovich,
69 Ohio St.3d 225, 229 (1994) 2

Van Fossen v. Babcock & Wilcox Co.,
36 Ohio St.3d 100, syl. 6 (1988) 3

OTHER:

Ohio Supreme Court Rules for the Reporting of Opinions,
Rule 1(B) 3

No. 95-380

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

RONALD ANDOLSEK,

Petitioner,

v.

CITY OF KIRTLAND,

and

WES TRIMBLE, ADMINISTRATOR,
BUREAU OF WORKERS' COMPENSATION,

and

INDUSTRIAL COMMISSION OF OHIO,

Respondents.

**Petition For Writ of Certiorari To The Court of Appeals
Eleventh Appellate District Lake County, Ohio**

Respondents do not deny that the door to the Courthouse is closed for individuals with psychiatric problems caused by their work, such as Mr. Andolsek. The only suggestion on this point by Respondents is that there might be a remedy available through an Ohio tort referred to as an "Intentional Tort."

However, the tort known as "Intentional Tort" in Ohio law has no bearing on this case, or the deprivation of a remedy caused by the law barring psychiatric claims. Respondents, in their opposing brief, misstate the law of Ohio, and mislead this Court. In their opposing brief, the Respondents indicate (incorrectly) that there is an intentional tort remedy available to injured workers suffering solely from a psychiatric condition, and thus there is not a complete bar to a remedy.

The Ohio "Intentional Tort" remedy is not a Workers' Compensation remedy. As the Ohio Supreme Court has held, "intentional torts are completely unrelated to workers' compensation and the employment relationship." *State, ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 229 (1994).

Therefore, there is no support in Ohio law for finding that the so-called "intentional tort" remedy would have any application to, or implication on, the complete denial of any workers' compensation remedy.

Additionally, the suggestion by respondents is misleading because there is no possibility of an intentional tort remedy being available to a worker such as Mr. Andolsek under Ohio law.

The intentional tort remedy is a very limited remedy. There would be no possibility of Mr. Andolsek establishing an intentional tort. An intentional tort

> is an act committed with the intent to injure another, or committed with the belief that such an injury is substantially certain to occur.
>
> *Jones v. VIP Development Co.*, 15 Ohio St.3d 90, syl. 1.[1]

The intentional tort does not apply to the situation where a worker suffers harm due to the natural course of his employment -- which is the situation in this case. The intentional tort remedy is available only to workers who are intentionally harmed by their employer. This is an extremely high threshold, and does not apply to workers such as Mr. Andolsek, who suffer psychiatric harm due to the conditions of their employment. An intentional tort only applies where there is knowledge by the employer that harm will occur. *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, syl. 6 (1988).

Second, although the Respondents indicate that there is a dispute as to the work-relatedness of the psychiatric harm, this case was dismissed based on Respondents' "motion for judgment on the pleadings". Such a motion takes as admitted the allegations of the complaint. Thus, in the current posture of this case, there is no dispute that the psychiatric harm resulted from the work.

---

[1] In Ohio, "the syllabus of a Supreme Court opinion states the controlling point or points of law decided." *Ohio Supreme Court Rules for the Reporting of Opinions*, Rule 1(B).

Respectfully submitted,

STEWART R. JAFFY
MARC J. JAFFY
STEWART JAFFY & ASSOCIATES CO., LPA
306 East Gay Street
Columbus, Ohio 43215
Telephone: 614/228-6148

Counsel for Appellant

OF COUNSEL:
James Kendis
SHAPIRO, KENDIS & ASSOCIATES, LPA
Rockefeller Building
614 Superior West, 15th Floor
Cleveland OH 44113-1398
Telephone: 216/621-2030